UNITED STATES DISTRICT COURT

DISTRICT OF MASSACHUSETTS

PLAINTIFFS	*	
ANDREW ARVANITIS	*	
EDWARD JACOBS	*	
V.	*	
DEFENDANTS	*	CIVIL ACTION
CAROLYN VICARI	*	NO. 1:10-CV-10213-DJC
JOHN HURLEY	*	
JEFFREY S. BOLGER	*	
MICHAEL MALONEY	*	
ALEXANDRA MCINNIS	*	
JOHN E. TAYLOR	*	
LYDIA GOLDBLATT	*	
CHRISTOPHER BOWMAN	*	
DONALD R. MARQUIS	*	
JOHN C. CRATSLEY	*	
BARBARA A. LENK	*	
ELSPETH B. CYPHER	*	
DAVID A. MILLS	*	

OPPOSITION TO REPORT AND RECOMMENDATION ON MOTION TO DISMISS

CURRENT ISSUE

1. Plaintiffs pro se Arvanitis and Jacobs object to the Report and Recommendation on Motion to Dismiss[1] by Magistrate Robert B. Collings (hereinafter Collings) to dismiss the action on the grounds of either (1) Rooker-Feldman doctrine or (2) qualified and judicial immunity. The plaintiffs offer the following clarifications to the facts and reasoning presented in the RAR that are in error and submit that sufficient cause exists to deny the defendant's motion to dismiss the complaint.

ARGUMENT AGAINST

DISMISSAL BASED ON THE ROOKER-FELDMAN DOCTRINE

2. The RAR declares that the relief sought by Plaintiffs Arvanitis and Jacobs to "[v]acate the rulings of the defendants" (RAR at 12) is essentially "ask[ing] the federal court to set aside the Massachusetts Appeals Court's decision affirming the determination that the commission lacked ju-

[1] Magistrate Robert B. Collings' Report and Recommendation on Motion to Dismiss shall be hereinafter referred to as RAR and page.

risdiction to hear the plaintiffs' reclassification request" (RAR at 13) invokes Rooker-Feldman.

3. Arvanitis and Jacobs state that they do not seek to overturn or vacate the Massachusetts Superior and Appeals Court determinations affirming the denial of their GROUP [emphasis added] reclassification request and assert that the denial of their group reclassification appeal is governed by contract law - specifically Article 17A which states in relevant part:

"ARTICLE 17A CLASS REALLOCATIONS

Section 1

Class reallocations may be requested by the President of SEIU Local 509/Secretary of the Alliance whenever he/she believes a reallocation is justified by the existence of an inequitable relationship between the positions covered by the reallocation request and other state positions. In the event the Personnel Administrator agrees that such an inequity exists and in the event such reallocation shall result in the need for a funding request to implement the reallocation, the Personnel Administrator may pursue options for funding at the time of issuance of said concurrence, or defer discussion on funding to negotiations for a successor Collective Bargaining Agreement, at the sole discretion of the Personnel Administrator.

Section 2

The Employer and the Union agree that the procedure provided in Section 1 shall be the sole procedure for class reallocation for all classes covered by this Agreement. No

other class reallocations shall be granted under any other provisions of this Agreement.

Section 3

The parties acknowledge that the classification plan covering titles in Units 8 and 10 addresses the issue of pay equity/comparable worth. The class reallocation process contained in this Article shall be the procedure for addressing any additional pay equity/comparable worth concerns about titles within bargaining units covered by this Agreement."

4. Arvanitis and Jacobs maintain that their reclassification request is governed by the Collective Bargaining Agreement (hereinafter CBA) of which they are subject to.

5. The injury caused to them stems from the violation of their CBA with there being no state court judgment regarding this injury.

6. The commission has previously (a) noted, (b) stated recognition of, and (c) heard numerous cases of appeals of employees covered by a collective governing agreement as outlined in the complaint.

7. What the defendants have impermissibly introduced is a legally erroneous reliance that M.G.L. Chap. 30, §49 is the governing statute. This reliance

is specifically refuted by M.G.L. Chap. 150E, §

which clearly states

"Chapter 150E Labor Relations: Public Employees

Section 7. (d) If a collective bargaining agreement reached by the employer and the exclusive representative contains a conflict between matters which are within the scope of negotiations pursuant to section six of this chapter and any municipal personnel ordinance, by-law, rule or regulation; the regulations of a police chief pursuant to section ninety-seven A of chapter forty-one or of a police commissioner or other head of a police or public safety department of a municipality; the regulations of a fire chief or other head of a fire department pursuant to chapter forty-eight; any of the following statutory provisions or rules or regulations made thereunder:

(c) section twenty-four A, paragraphs (4) and (5) of section forty-five, paragraphs (1), (4) and (10) of section forty-six, section forty-nine, as it applies to allocation appeals, and section fifty-three of chapter thirty;

(k) sections forty-five to fifty, inclusive, of chapter thirty;

the terms of the collective bargaining agreement shall prevail. [emphasis added]

8. As the CBA does not conflict with the provisions of M.G.L. Chap. 30, §49 in where it (the agreement) prohibits group reclassification appeals to proceed before the Commission as noted under Article 17A, then the decision of the commission

regarding the findings that the appeal before it was of a group nature should be left unchanged.

9. Accordingly, Arvanitis and Jacobs do not seek nor are entitled to vacate the rulings of the defendants as it relates to the finding regarding a group reclassification appeal.

10. However, the defendants have impermissibly ignored the individual aspect of the plaintiffs' reclassification appeals and it is this injury of which the plaintiffs seek relief.

11. Collings states that "if the plaintiff alleges a constitutional violation by an adverse party independent of the injury caused by the state court judgment, the doctrine does not bar jurisdiction." (RAR at 13)

12. Article 17 of the CBA clearly states that

"ARTICLE 17 CLASSIFICATION AND RE-CLASSIFICATION

Section 3 Individual Appeal of Classification

Individual employees shall continue to have the same right to appeal the propriety of the classification of his/her position through the Personnel Administrator or the Civil Service System which the individual employee enjoyed on June 30, 1976, and such appeal may not be the subject of a grievance or arbitration under Article 23A herein."

13. Where the CBA of the plaintiffs clearly provides for reclassifications to be clastic, it surely follows then any denial of the group appeal under Article 17A does not apply to the individual appeal under Article 17 as it is well established that no part of a contractual agreement may be used to defeat another.

14. Arvanitis and Jacobs further state their individual reclassification appeals also contained a statutory request made pursuant to M.G.L. Chap 31, §2 which was ignored. It is these dual injuries under Article 17 and Chapter 31 by which they seek relief.

15. The commission had already ruled prior to the plaintiffs' appearances in 2005 that group appeals containing a particular person did not constitute grounds to deny jurisdiction to the same person if he/she submitted an individual appeal as well. This is clearly and unmistakably evidenced by the following Findings of Fact in an identical case where the commission found:

"20. On or about October 30, 2001, a Group Reclassification Appeal dated October 11, 2001 was filed the Division's Human Resource Department. The Auditor IIs at the Division were seeking to be reclassified to the posi-

tion of Auditor III and the Auditor IIIs including the Appellant were seeking to be reclassified from Auditor III to Auditor IV (Exhibit 24).

21. On or about June 18, 2002, the Appellant filed an individual Reclassification Appeal seeking to be reclassified from an Auditor Ill position to an Auditor IV position (Exhibit 26).

22. Pursuant to this request, the Appellant was interviewed on January 28, 2003 by the Appointing Authority's Personnel Analysts regarding his position (Exhibit 24)

23. In his written response to the questions posed to him, the Appellant described the basic reason for his request to be reclassified as follows: "additional job responsibilities and duties as required by the Director of Revenue. Assist the Director as needed for state wide audit control and other administrative functions"(Exhibit 26).

24. On September 2, 2003, The Personnel Analyst of the Appointing Authority's Human Resources Division, after review of the appeal audit, denied the Appellant's request for reclassification of his position (Exhibit 31).

25. On September 22, 2003, the Appellant filed an appeal of the decision of the Personnel Analyst and on January 8, 2004, the Human Resource Division denied the Appellant's appeal (Exhibit 5)."MOHAMMED HAROON v. Division of Unemployment Assistance Docket No. C-04-88 18 MCSR 391, 392.

16. Mohammed Haroon is a member of a union and is subject to a CBA. The contract in which he is a subject to has identical mechanisms for group appeals versus individual appeals.

17. The commission wrote in it decision that it did "not have jurisdiction over challenges to reclassification appeals where such a class is covered by a collective bargaining agreement." (RAR at 6). The lack of jurisdiction asserted by the commission is true - but only for group appeals as detailed under Article 17A.

18. Collings stated

> "…there is no question that the plaintiffs are 'state-court losers…' with …"[t]he only arguable question, in the Court's view is whether the injuries of which the plaintiffs complain were 'caused by' the state-court judgment" (RAR at 13) and "…the only real injury to the Plaintiffs is ultimately still caused by a state court judgment." (RAR at 14)

19. No findings nor facts exist that establish as a matter of law as mandatorily required for summary judgment that the individual reclassification requests made by Arvanitis and Jacobs pursuant to the provisions of Article 17 and Chapter 31 have been given the bare minimum requirements required by the U.S. Constitution.

20. The assertion that the state courts investigated and found the subsequent claim by the Commission that it lacked jurisdiction under M.G.L. Chap 30, §49 is not dispositive for the purposes of Rook-

er-Feldman as M.G.L. Chap 30, §49 is not the governing statute unless the CBA is in disagreement with it.

21. The CBA is not is disagreement with M.G.L. Chap 30, §49.

22. The injury that plaintiffs allege stems from constitutional violations regarding Article 17 of the CBA in where the defendants, acting in their individual administrative capacities up to and including the state courts never address the individual appeals of the plaintiffs.

23. Accordingly, the injury complained of by the plaintiffs was not caused by a state court judgment.

24. Arvanitis and Jacobs do not insist or seek the federal court to overturn the state court ruling regarding the GROUP reclassification appeal.

25. Arvanitis and Jacobs seek to have the federal court hear the denial of due process regarding their INDIVIDUAL reclassification appeals.

26. Collings (along with all the other named defendants) asserts that no deprivation of Due Process Rights occurred regarding the reclassification

requests of Arvanitis and Jacobs made pursuant to M.G.L. Chap 30, §49.

27. Collings falls into the same trap of assuming that M.G.L. Chap 30, §49 is the law by which Arvanitis and Jacobs submitted reclassification requests.

28. The reclassification requests of Arvanitis and Jacobs were made pursuant to Article 17.

29. It may be true that Arvanitis and Jacobs are state-court losers as a class under M.G.L. Chap 30, §49 but they are assuredly not state court losers under Article 17 of the applicable CBA as individuals.

30. Where the CBA governing Arvanitis and Jacobs grants them rights as individuals that are not dependent on jurisdiction from M.G.L. Chap 30, §49, their claims of deprivation of Due Process Rights does not include a prior state court judgment against them thus allowing 1st Federal District jurisdiction in the matter.

31. There is a legitimate question as to whether or not the Due Process rights were denied regarding the individual reclassification appeals of Arvanitis and Jacobs.

32. Collings states

> "[a]ny purported deficiency in the process could have been corrected by the commission and the plaintiffs availed themselves of remedial process." (RAR at 24)

33. The standards for summary judgment are clear in that dismissal is warranted when it is obvious as a matter of law that the defendants' actions have been determined to be accordance with the law.

34. The complaint alleges that defendants failed to observe, acknowledge, recognize or correct these documented due process deficiencies by not providing notice at any level until the commission hearing.

35. The best and only support for these and subsequent violations is the statement by Collings that the commission (and others) "could" [emphasis added] have corrected these due process deficiencies and the mere fact they could have done so is sufficient.

36. This is akin to declaring that if a person is a victim of harassment, discrimination, or disparate treatment by state officials while receiving a parking ticket, the state and federal courts do

not have to act if the person is declared to have received the parking ticket legally.

37. To declare that if someone *could* have corrected due process violations but, have never acknowledged or done so, satisfies the U.S. Constitution is untenable.

38. Where the record does not state as a matter of law that these due process deficiencies were addressed by the defendants, the state superior or appeals courts, then sufficient grounds for summary dismissal as provided for under the Rooker-Feldman doctrine is absent.

ARGUMENT AGAINST

DISMISSAL BASED ON THE GROUNDS OF QUALIFIED IMMUNITY.

39. The RAR states the

> '"root requirement of the Due Process Clause [is] that an individual be given an opportunity for a hearing before he is deprived of any significant property interest…"' (RAR at 21) and that "[t]he U.S. Constitution requires only the [plaintiff] was provided notice and a meaningful opportunity to respond." (RAR at 22)

40. Collings goes on to state this constitutional "requirement was clearly met on the facts of the case." (RAR at 22)

41. As previously noted above in case of Haroon v. Department of Unemployment Assistance, Haroon re-

ceived the opportunity to complete an interview guide, offer objections at the appeal audit and be granted jurisdiction regarding his individual appeal despite of and with the Department of Unemployment Assistance, Personnel Administrator and Commission's prior knowledge of the existence of a group reclassification request involving union members of Haroon was a part of.

42. The glaring lack of meaningful opportunity to be heard regarding the individual reclassification requests of Arvanitis and Jacobs is contrasted by the clear, unequivocal opportunity for Haroon to be heard in identical circumstances and time period.

43. Arvanitis and Jacobs respectfully object to the determination on RAR 22 that they received the minimal due process requirements guaranteed by the Constitution.

44. Arvanitis and Jacobs submit their denial of Due Process is not clearly established as a matter of law but is more properly an issue of fact for the Court to determine and thus not sufficient grounds for summary dismissal.

CONCLUSION

45. Arvanitis and Jacobs seek to have the wrongfully denied due process regarding their reclassification appeals rights as allowed under Article 17 of the CBA and M.G.L. Chap.31, §2(b) restored.

46. No notice was given nor was opportunity given for Arvanitis and Jacobs to be heard pursuant to Article 17 of the CBA or Chapter 31.

47. The plaintiffs aver that the complaint alleges certain defendants did mislead, withhold key facts and utter false statements while serving as officials of the Commonwealth of Massachusetts thus causing harm to the plaintiffs.

48. The complaint along with the presence of impropriety by state officials constitute sufficient grounds for this Honorable Court to deny the defendants motion to dismiss or in the alternative hold an evidentiary hearing prior to rendering a decision on the motion to dismiss.

Respectfully Submitted: September 6, 2011

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LOCAL RULE 7.1 CERTIFICATION

49. We hereby certify that we conferred with or attempted to confer with the defendants' Attorney of Record Maryanne Reynolds, BBO# 627127 by telephone on September 6, 2011 and attempted in good faith to resolve or narrow the issue.

Andrew Arvanitis

Edward Jacobs

CERTIFICATE OF SERVICE

We hereby certify, under the penalties of perjury, that we have made service on this date, of the following listed documents.

OPPOSITION TO REPORT AND RECOMMENDATION ON MOTION TO DISMISS

Service was made upon counsel for each other party by depositing in the post office with first-class postage prepaid, address as follows: Maryanne Reynolds, BBO. No. 627127, Assistant Attorney General, Office of the Attorney General, Central Massachusetts Regional Office, 10 Mechanic Street, Suite 301, Worcester, MA 01608 on September 6, 2011.

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